

The Telecommunications Municipal Infrastructure Maintenance Fee Act provides that the term "telecommunications" does not include the purchase of telecommunications by a telecommunications service provider for use as a component part of the service provided by him or her to the ultimate retail consumer who originates or terminates the end-to-end communications. See 35 ILCS 635/10(b). (This is a GIL).

November 8, 1999

Dear Mr. Xxxxx:

This letter is in response to your letter dated July 23, 1999. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

The purpose of this memo is determining the proper taxation of the Illinois Telecommunication Infrastructure Maintenance Fee. COMPANY is a telecommunications company, which provides telephone service in Illinois. COMPANY bills its customers and remits to state and municipalities the fees collected for the Infrastructure Maintenance Fee.

The taxation of customers in question is the telecommunications service providers who provide telecommunication service to end-users. Under the act we are questioning the sale of telecommunication service to the payphone service providers. The primary product COMPANY provides is dial tone to the payphone, which can be deemed as a component part of payphone service. Is the sale of telecommunication services to payphone service providers a taxable event in all cases?

If you find this service to be non-taxable, does COMPANY need to require some type of exemption or sale certificate from its customers who provide payphone service? Furthermore, if COMPANY has collected and remitted the dollars with respect to the Infrastructure Maintenance Fee is COMPANY obligated to refund the dollars to these customers or is it the obligation of the state and municipalities to whom these collections were submitted.

We appreciate your review of this matter. We currently have a customer questioning the validity of this fee appearing on their bill. Please contact me if you have any questions regarding this matter.

The Telecommunications Municipal Infrastructure Maintenance Fee Act (35 ILCS 635/1 et seq.), effective January 1, 1998, provides for the imposition of various fees upon telecommunications retailers. Section 15 of the Act imposes a State infrastructure maintenance fee upon telecommunications retailers equal to 0.5% of all gross charges charged by the telecommunications retailer to service addresses in this State for telecommunications, other than wireless telecommunications, originating or received in this State. 35 ILCS 635/15. Section 15 also provides for an optional infrastructure maintenance fee which telecommunications retailers may pay with respect to the gross charges charged by the telecommunications retailer to service addresses in a particular municipality for telecommunications, other than wireless telecommunications, originating or received in the municipality. 35 ILCS 635/15(c). These fees are collected, enforced and administered by the Illinois Department of Revenue.

Section 10 of the Act specifically provides that the term "telecommunications" does not include the purchase of telecommunications by a telecommunications service provider for use as a component part of the service provided by him or her to the ultimate retail consumer who originates or terminates the end-to-end communications. 35 ILCS 635/10(b). Generally, the sale of telephone transmission services to pay telephone providers would be considered a sale for resale and not subject to tax under the Telecommunications Municipal Infrastructure Maintenance Fee Act. The telephone transmission services would be a component part of the pay telephone service provided by the pay telephone providers. This is not affected by the fact that the charges to the ultimate consumer from such pay telephone services are not considered "gross charges" subject to tax under the Act. See 35 ILCS 635/10(a)(8).

In Illinois, purchasers of telecommunications for resale are required under Section 8 of the Telecommunications Excise Tax Act to obtain resale numbers from the Department and provide their sellers with certificates of resale. 35 ILCS 630/8. This same documentation may be used to establish the non-taxability of the sale under the Telecommunications Municipal Infrastructure Maintenance Fee Act.

Telecommunications providers that have collected Telecommunications Municipal Infrastructure Maintenance Fees in error from their customers and submitted those funds to the Department may file a claim for credit or refund with the Department only if those providers filing the claim can establish that they unconditionally refunded those amounts to their customers. See 35 ILCS 635/27.55 (incorporating the provisions of Section 6 of the Retailers' Occupation Tax Act, 35 ILCS 130/6). Absent such a claim, the State will retain those funds as there is no statutory authority or mechanism for the State to return such payments to the telecommunications providers' customers. We recommend that you contact the local taxing jurisdictions that have imposed local municipal telecommunications infrastructure maintenance fees under Section 20 of the Telecommunications Municipal Infrastructure Maintenance Fee Act for information about their credit procedures. See 35 ILCS 635/20.

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I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Terry D. Charlton
Associate Counsel

TDC:msk
Enc.